

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

IN RE EX PARTE APPLICATION OF UNI-  
TOP ASIA INVESTMENT LIMITED FOR AN  
ORDER TO OBTAIN DISCOVERY FOR USE  
IN FOREIGN PROCEEDINGS  
Petitioner.

Civil Action No. CIV-18-783-W

Misc. Action No. 6

**TIPTOP’S MOTION TO QUASH SUBPOENAS ISSUED UNDER 28 U.S.C. § 1782  
TO TIPTOP ENERGY PRODUCTION US LLC, TIPTOP OIL AND GAS US LLC,  
TIPTOP US HOLDING CORPORATION, DEVON ENERGY CORPORATION,  
AND CHESAPEAKE ENERGY CORPORATION**

Tiptop Energy Production US LLC, Tiptop Oil and Gas US LLC, and Tiptop US Holding Corporation (collectively, “Tiptop”) move the Court to quash five subpoenas that Uni-Top Asia Investment Limited (“Uni-Top”) issued to Tiptop, Devon Energy Corporation, and Chesapeake Energy Corporation. Uni-Top issued these subpoenas under this Court’s order dated July 9, 2018, granting the above-captioned action, initiated by Uni-Top’s June 27, 2018 “*Ex Parte* Application for an Order under 28 U.S.C. § 1782 to Obtain Discovery for Use in Foreign Proceedings.”<sup>1</sup>

Uni-Top seeks discovery under 28 U.S.C. § 1782 to assist in the execution of an arbitration award that has not yet been confirmed, and may never be because of pending challenges to that award before courts in Beijing and in Hong Kong.<sup>2</sup> In analogous situations, most courts have found that Section 1782 does not allow a party in Uni-Top’s position to obtain discovery. This is particularly true when the party seeks discovery that

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<sup>1</sup> See Uni-Top’s June 24, 2018 Memorandum of Points and Authorities In Support of Its Application for Discovery under 28 U.S.C. § 1782 (“Uni-Top’s Memorandum”), Exhibits 1-5.

<sup>2</sup> The arbitration award was rendered in favor of Uni-Top in an arbitration between Uni-Top and Sinopec International Petroleum and Production Corporation (“SIPC”).

has no bearing on whether to confirm an arbitration award that is under judicial review. That is exactly what Uni-Top is doing here, seeking discovery on the financial wherewithal, corporate structure, and business relationships of the adverse party to an unconfirmed arbitration award. Because Uni-Top has misused Section 1782, Tiptop respectfully requests the Court to quash the five Uni-Top subpoenas issued to Tiptop, Devon, and Chesapeake.

**A. Jurisdiction**

This Court's jurisdiction to hear and grant this Motion to Quash arises under 28 U.S.C. § 1782 and Rules 26, 30, and 45 of the Federal Rules of Civil Procedure.

**B. Relief Sought**

As further explained in the accompanying Memorandum and Points of Authorities, this Motion to Quash is based on Uni-Top's misuse of Section 1782:

- Uni-Top has not satisfied Section 1782's "proceedings" requirement because actions to confirm an arbitration award or execute upon a subsequent judgment are not "proceedings" under Section 1782.
- Uni-Top has not satisfied Section 1782's "for use in" requirements because: (1) the information that Uni-Top seeks about SIPC's assets is irrelevant to an action to confirm an arbitration award; (2) Uni-Top cannot reasonably contemplate executing upon a judgment that it does not have; and (3) Uni-Top has not shown that SIPC is unable or unwilling to pay any eventual judgment, hence, Uni-Top has no need for the requested discovery.

- Discovery requests under Section 1782 in search of assets to determine *whether* and *where* to commence proceedings, as Uni-Top seeks to do here, is by definition a fishing expedition and must be denied according to courts that have addressed the issue.
- The discretionary *Intel* factors, should the Court reach them, favor quashing Uni-Top's subpoenas.
- It was improper for Uni-Top to submit its Application *ex parte* because Uni-Top is under no time constraint and because its application failed to address the significant obstacles it must overcome before it has an executable judgment.

As such, Tiptop respectfully requests that this Court issue an order quashing the five subpoenas issued by Uni-Top under this Court's order dated July 9, 2018 to: (1) Tiptop Energy Production US LLC, (2) Tiptop Oil and Gas US LLC, (3) Tiptop US Holding Corporation, (4) Devon Energy Corporation, and (5) Chesapeake Energy Corporation. Tiptop further requests that this Court order Uni-Top to pay Tiptop's attorney's fees and costs that Tiptop has incurred in preparing and submitting this motion. If the Court orders Uni-Top to pay Tiptop's reasonable attorney's fees, Tiptop requests the opportunity to file a separate motion with evidence to support these reasonable attorney's fees and costs.

To the extent necessary, Tiptop reserves its right to assert objections to the substance of Uni-Top's subpoenas as permitted under the Federal Rules of Civil Procedure.

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENTS**

**CERTIFICATE OF LOCAL CIVIL RULE 37.1 CONFERENCE**

Pursuant to Local Civil Rule 37.1, on July 24, 2018, undersigned counsel Andrew Melsheimer conferred with Plaintiff's counsel, Amy J. Pierce, and discussed in good faith the issues raised in this Motion to Quash. Because counsel, after a sincere attempt to resolve differences, were unable to reach an accord, this motion is presented to the Court for resolution. *See generally* Declaration of Andrew Melsheimer, attached hereto.

**CERTIFICATE OF SERVICE**

I certify that on August 15, 2018, a true and correct copy of the foregoing was emailed and mailed, via U.S. first-class mail, postage prepaid to the party listed below.

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